

sponsor of a treatment IDE is responsible for submitting all other reports required under § 812.150.

[62 FR 48947, Sept. 18, 1997]

**§ 812.38 Confidentiality of data and information.**

(a) *Existence of IDE.* FDA will not disclose the existence of an IDE unless its existence has previously been publicly disclosed or acknowledged, until FDA approves an application for premarket approval of the device subject to the IDE; or a notice of completion of a product development protocol for the device has become effective.

(b) *Availability of summaries or data.* (1) FDA will make publicly available, upon request, a detailed summary of information concerning the safety and effectiveness of the device that was the basis for an order approving, disapproving, or withdrawing approval of an application for an IDE for a banned device. The summary shall include information on any adverse effect on health caused by the device.

(2) If a device is a banned device or if the existence of an IDE has been publicly disclosed or acknowledged, data or information contained in the file is not available for public disclosure before approval of an application for premarket approval or the effective date of a notice of completion of a product development protocol except as provided in this section. FDA may, in its discretion, disclose a summary of selected portions of the safety and effectiveness data, that is, clinical, animal, or laboratory studies and tests of the device, for public consideration of a specific pending issue.

(3) If the existence of an IDE file has not been publicly disclosed or acknowledged, no data or information in the file are available for public disclosure except as provided in paragraphs (b)(1) and (c) of this section.

(4) Notwithstanding paragraph (b)(2) of this section, FDA will make available to the public, upon request, the information in the IDE that was required to be filed in Docket Number 95S-0158 in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, for investigations involving an exception from informed

consent under § 50.24 of this chapter. Persons wishing to request this information shall submit a request under the Freedom of Information Act.

(c) *Reports of adverse effects.* Upon request or on its own initiative, FDA shall disclose to an individual on whom an investigational device has been used a copy of a report of adverse device effects relating to that use.

(d) *Other rules.* Except as otherwise provided in this section, the availability for public disclosure of data and information in an IDE file shall be handled in accordance with § 814.9.

[45 FR 3751, Jan. 18, 1980, as amended at 53 FR 11253, Apr. 6, 1988; 61 FR 51531, Oct. 2, 1996]

**Subpart C—Responsibilities of Sponsors**

**§ 812.40 General responsibilities of sponsors.**

Sponsors are responsible for selecting qualified investigators and providing them with the information they need to conduct the investigation properly, ensuring proper monitoring of the investigation, ensuring that IRB review and approval are obtained, submitting an IDE application to FDA, and ensuring that any reviewing IRB and FDA are promptly informed of significant new information about an investigation. Additional responsibilities of sponsors are described in subparts B and G.

**§ 812.42 FDA and IRB approval.**

A sponsor shall not begin an investigation or part of an investigation until an IRB and FDA have both approved the application or supplemental application relating to the investigation or part of an investigation.

[46 FR 8957, Jan. 27, 1981]

**§ 812.43 Selecting investigators and monitors.**

(a) *Selecting investigators.* A sponsor shall select investigators qualified by training and experience to investigate the device.

(b) *Control of device.* A sponsor shall ship investigational devices only to qualified investigators participating in the investigation.